

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

WILLIE C. MCGHEE,

Plaintiff,

Case No.: 1:10-cv-333

v.

HONORABLE PAUL L. MALONEY

LT. MICHAEL MCCALL, et al.,

Defendants.

_____ /

**ORDER ADOPTING MAGISTRATE JUDGE'S
REPORT AND RECOMMENDATION**

The Court has reviewed the Report and Recommendation (Dkt. #4) filed by United States Magistrate Judge Joseph G. Scoville in this action. The Report and Recommendation was duly served on the parties. No objections have been filed.

ACCORDINGLY, the Report and Recommendation is hereby adopted as the opinion of the Court. Plaintiff's complaint is dismissed.

Because the plaintiff proceeds *in forma pauperis*, the Court must determine whether any appeal would be taken in good faith. Under 28 U.S.C. § 1915(a)(3), “[a]n appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith.” “The statute requires that a district court must determine in writing whether a request to appeal in forma pauperis is taken in good faith.” *McGore v. Wigglesworth*, 114 F.3d 601, 610 (6th Cir. 1997). The “good faith” requirement must be judged by an objective standard. *Coppedge v. United States*, 369 U.S. 438, 445 (1962). “Good faith” is demonstrated when the party seeks appellate review of an issue that is “not frivolous.” *Id.* An appeal is frivolous when “it lacks an arguable basis either in law or

in fact.” *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). “The former occurs when ‘indisputably meritless’ legal theories underlie the complaint and the latter when it relies on ‘fantastic or delusional’ allegations.” *Brand v. Motley*, 526 F.3d 921, 923 (6th Cir. 2008) (quoting *Neitzke*, 490 U.S. at 327-28)). Under this standard, a determination of “good faith” requires “an inquiry into the merits of the appeal, but does not require that probable success be demonstrated. The Court’s inquiry is limited to whether the appeal involves ‘legal points arguable on their merits (and therefore not frivolous).’” *Jones v. Frank*, 622 F.Supp.1119, 1120 (W.D. Tex. 1985) (citing *Anders v. California*, 386 U.S. 738, 744 (1967)). Having reviewed the record for this purpose, the court concludes that an appeal would not be taken in good faith.

THEREFORE, IT IS ORDERED that Plaintiff’s complaint is **DISMISSED** pursuant to 28 U.S.C. § 1915(e)(2) for the reasons stated in the Report and Recommendation.

This action is terminated.

Dated: May 27, 2010

/s/ Paul L. Maloney
Paul L. Maloney
Chief United States District Judge